IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 9TH OCTOBER 2007 / 17TH ASWINA 1929

Bail Appl..No. 6251 of 2007()

CP.25/2006 of J.M.F.C.-II,THRISSUR
CRIME NO.495/04 OF TOWN WEST POLICE STATION, THRISSUR.

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PETITIONER/2ND ACCUSED:

ANTO, AGED 33 YEARS,
S/O. PAULOSE, PEREPPADAN HOUSE, PULLAZHY,TRICHUR.

BY ADV. SRI.NAGARAJ NARAYANAN
SRI.SAIJO HASSAN

RESPONDENTS: STATE:

STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY P.P. SRI. JAI GEORGE.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 09/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. No. 6251 OF 2007

Dated this the 9th day of October, 2007

ORDER

Application for anticipatory bail. The petitioner faces indictment in a prosecution for offences punishable, inter alia, under Sec.308 of the IPC and Sec.25 of the Arms Act. The petitioner was enlarged on bail at the crime stage, it is submitted. Investigation is complete. Cognizance has been taken. Final report has been filed. The case has been registered as C.P. Consequent to the non-appearance of the petitioner, a warrant of arrest has been issued by the learned Magistrate against the petitioner. The petitioner finds such warrant of arrest issued by the learned Magistrate in the committal proceedings chasing him.

2. According the learned counsel for the petitioner, the petitioner is absolutely innocent. His absence was not wilful

or deliberate. He is willing to surrender before the learned Magistrate and apply for regular bail. But he apprehends that his application for regular bail may not be considered by the learned Magistrate on merits in accordance with law and expeditiously. It is, in these circumstances, prayed that directions under Sec.438 and/or Sec.482 of the Cr.P.C. may be issued in favour of the petitioner.

3. The learned Public Prosecutor opposes the application. After the decision in **Bharat Chaudhary and another v. State of Bihar (**AIR 2003 SC 4662), it is by now trite that powers under Sec.438 of the Cr.P.C. can be invoked in favour of a person who apprehends arrest in execution of a non-bailable warrant issued by a court in a pending proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist. I am not persuaded, in the facts and circumstances of this case, that any such reasons exist.

4. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider the petitioner's application for regular bail on merits in accordance with law and

expeditiously. No special or specific directions appear to be necessary. Every court must do the same. Sufficient general directions on this aspect have already been issued in the decision reported in **Alice George v. Deputy Superintendent of Police** (2003 (1) KLT 339).

5. In the result, this bail application is dismissed; but with the observation that if the petitioner surrenders before the learned Magistrate and seeks bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously – on the date of surrender itself.

6. Hand over a copy of this order to the learned counsel for the petitioner.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge